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ERIC ANDERSON, M.D. and FREMONT EMERGENCY SERVICES, INC. (erroneously sued and served herein as FREEMONT EMERGENCY SERVICE, INC.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOAN G. LOZOYA, Plaintiff, v. ERIC J. ANDERSON, M.D.; LINDSY BLAKE, M.D.; HOSPITAL CORPORATION OF AMERICA, INC.; MOUNTAIN VIEW HOSPITAL; FREEMONT EMERGENCY SERVICE, INC.; ALEXANDRA E. PAGE, M.D.; KAISER FOUNDATION HEALTH PLAN, INC.; KAISER PERMANENTE and DOES 1 through 30, inclusive, Defendants.	CASE NO. 07CV-2148IEG (WMC) **NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANTS ERIC ANDERSON, M.D. AND FREMONT EMERGENCY SERVICES, INC. TO PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES;** **[Filed Concurrently with Declaration of Janice Eckes]** **Date : June 2, 2008** **Time : 10:30 a.m.** **Dept. : Courtroom 1** Complaint Filed: 11/8/2007

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on June 2, 2008, at 10:30 a.m., or as soon thereafter as the matter may be heard in Courtroom 1 of the above-referenced court located at 880 Front St., Rm. 4290, San Diego, CA 92101, Defendants Eric Anderson, M.D. and Fremont Emergency Services, Inc. ("Defendants") will move this Court to dismiss the first cause of action of Plaintiff's First Amended Complaint ("FAC") for failure to state a claim for violation of 42 U.S.C. § 1395dd et al, the Emergency Medical Treatment and Active labor Act ("EMTALA") as against Defendants. Said Motion to Dismiss is made on the following grounds:

The first cause of action against Defendants for violation of EMTALA fails to state a valid claim pursuant to Federal Rules of Civil Procedure 12(b)(6) as Plaintiff fails to plead the sufficient facts which gives rise to a cause of action for violation of EMTALA against Defendants. Therefore, Defendants respectfully request that this Court dismiss the first cause of action for violation of EMTALA of Plaintiff's First Amended Complaint as against Defendants.

This Motion to Dismiss will be based upon this Notice, the attached Memorandum of Points and Authorities, all exhibits attached hereto, the Declaration of Janice Eckes, Esq. filed concurrently herewith, all pleadings and records on file herein, as well as upon such further oral and documentary evidence which may be presented at the time of the hearing on this Motion to Dismiss.

DATED: April 14, 2008

LAW + BRANDMEYER, LLP

By s/ Yuk K. Law
YUK K. LAW, ESQ.
Attorney for Defendant
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ERIC ANDERSON, M.D. and FREMONT EMERGENCY SERVICES, INC. (erroneously sued and served herein as FREEMONT EMERGENCY SERVICE, INC.)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

I.

INTRODUCTION

This action involves allegations of medical malpractice. Plaintiff's First Amended Complaint ("FAC") contains two causes of action as against Defendants Eric Anderson, M.D. ("Dr. Anderson") and Fremont Emergency Services, Inc. ("Fremont"): first cause of action for violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA") and second cause of action for medical negligence. (Exhibit A: FAC.)

Plaintiff alleges she was injured after a fall and subsequently presented at Mountain View Hospital and Freemont. (Exhibit A: FAC, ¶¶ 29, 30.) Plaintiff alleges that Defendants Dr. Anderson and Fremont failed to properly exercise the proper degree of knowledge and skill in examining, diagnosing, treating, and caring for Plaintiff's severe fracture of the right shoulder, which resulted in further injuries. (Exhibit A: FAC, ¶ 22.) Plaintiff further alleges that Dr. Anderson advised her that she would be placed in a sling and given pain killers, but refused Plaintiff when she requested she be seen by an orthopedic specialist immediately. (Exhibit A: FAC, ¶ 16.) Plaintiff also alleges that Dr. Anderson failed to stabilize Plaintiff before forcing Plaintiff to be transferred to San Diego without arranging for or providing any medical transportation. (Exhibit A: FAC, ¶ 17.)

A review of Plaintiff's FAC reveals that Plaintiff's first cause of action against Defendants Dr. Anderson and Fremont for violation of EMTALA fails to state a claim upon which relief can be granted. Plaintiff fails to allege sufficient facts to state a cause of action for violation of EMTALA. Moreover, the defects in the EMTALA claim are of such a nature that even if Plaintiff is given leave to amend, Plaintiff will not be able to properly plead that cause of action. Therefore, Plaintiff's claim for violation of EMTALA as against Defendants Dr. Anderson and Fremont alleged in her first cause of action must be dismissed without leave to amend.

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II.

PLAINTIFF'S CLAIM FOR VIOLATION OF EMTALA FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Pursuant to Federal Rule of Civil Procedure 12, subd. (b) (6), a claim may be dismissed if it does not "state a claim upon which relief can be granted." Dismissal is proper where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory. Navarro v. Block (2001) 250 F.3d 729, 732. A plaintiff's complaint is liberally construed when considering a motion to dismiss and allegation of material facts are taken as true. Sprewell v. Golden State Warriors (2001) 266 F.3d 979, 988. However, the Court is not required to accept as true any conclusory allegations of law, unwarranted deductions of fact, or unreasonable inferences, and such allegations are insufficient to defeat a motion to dismiss. Id. Plaintiff must plead sufficient facts to show that the she may be entitled to some relief. Austin v. Terhune (2004) 367 F.3d 1167, 1171.

EMTALA imposes two duties on hospital emergency rooms: (1) a duty to screen a patient for an emergency condition, and (2) once an emergency condition is found, a duty to stabilize the patient before transferring or discharging him. 42 U.S.C. § 1395 dd; Baker v. Adventist Health, Inc. (2001) 260 F.3d 987, 992. This statute was created to respond to the specific problem of hospital emergency rooms refusing to treat patients who were uninsured or unable to pay for treatment. Baker, supra, 260 F.3d 987 at p.994. The statute was "not intended to create a national standard of care for hospitals or to provide a federal cause of action akin to a state law claim for medical malpractice." Id.

The Court of Appeals for the Ninth Circuit recognized that the "plain text of EMTALA explicitly limits a private right of action to the participating hospital." Eberhardt v. City of Los Angeles (1995) 62 F.3d 1253, 1256. Furthermore, a review of the legislative history of EMTALA "evince[d] a clear Congressional intent to bar individuals from pursuing civil actions against physicians." Id. Therefore, EMTALA does not provide a cause of action against physicians. Id. In Eberhardt, the Ninth Circuit highlighted the fact that this holding was consistent with every appellate court that had addressed this issue. Id.

In Jackson v. East Bay Hospital (2001) 246 F.3d 1248, the Ninth Circuit held that a medical group that provided administrative, purchasing and financial services to a hospital was not a hospital under EMTALA. Therefore, the Court held that EMTALA did not apply to the medical groups. Id. at p. 1260. Likewise in Burrows v. Burrows v. Redbud Cmty. Hosp. Dist. (2002) 34 Fed. Appx. 363, the Ninth Circuit held that an entity which provided physician staffing services to a hospital was neither a hospital or health facility for purposes of liability under EMTALA.

In the present case, Plaintiff's first cause of action contains a claim for violation of EMTALA as against Defendants Dr. Anderson and Fremont. (FAC.) Plaintiff alleges that Dr. Anderson and Freemont violated EMTALA by refusing to treat Plaintiff, refusing to request an immediate orthopedic specialist consult, refusing to and failing to stabilize Plaintiff's injuries and forcing Plaintiff's improper transfer to San Diego, and failing to provide medical transportation and refusing to properly care for Plaintiff. (Exhibit A: FAC, ¶ 33.) Plaintiff alleges that Dr. Anderson violated EMTALA by failing to provide necessary and proper medical care for Plaintiff's condition to which she was owed a duty. (Exhibit A: FAC, ¶ 34.) In addition, Plaintiff alleges that Freemont is a licensed medical facility. (Exhibit A: FAC, ¶ 26.) Plaintiff further alleges that the acts of Defendants Dr. Anderson and Freemont caused Plaintiff to suffer loss of use of her arm, impairment of enjoyment of life, significant pain and discomfort, emotional distress, and future medical costs and expenses. (Exhibit A: FAC, ¶ 35.)

However, Plaintiff fails to plead facts sufficient to state a claim for violation of EMTALA. A claim for violation of EMTALA may only be brought against hospitals, not physicians or medical groups. As such, Plaintiff is barred from bringing a claim for violation of EMTALA against Defendants Dr. Anderson and Fremont. At all relevant times, Fremont was not the participating hospital which treated and cared for Plaintiff; rather, Fremont was a medical group that contracted with hospitals to provide physician staffing to emergency departments. (Declaration of Janice Eckes, ¶ 3.) Further, at all relevant times, Dr. Anderson was a physician employed by Fremont. (Declaration of Janice Eckes, ¶ 3.) Plaintiff's factual allegations against Defendants Dr. Anderson and Fremont fail to state a claim for violation of EMTALA because Plaintiff cannot allege a claim for violation of EMTALA against physicians or medical groups.

As such, Plaintiff's claim that Dr. Anderson, a physician, and Fremont, a medical group which does not function as a hospital, violated EMTALA must fail.

Moreover, even if Plaintiff is given the opportunity to amend the FAC, Plaintiff will still be barred from bringing a claim for violation of EMTALA against Dr. Anderson and Fremont, as neither were a hospital at the time at the incident. Based upon the foregoing, Plaintiff's claim for violation of EMTALA stated in her first cause of action of the FAC must be dismissed without leave to amend.

III.

CONCLUSION

Based on the foregoing, Defendants Eric Anderson, M.D. and Fremont Emergency Services, Inc. respectfully requests that this Court dismiss Plaintiff's claim for violation of EMTALA of Plaintiff's First Amended Complaint without leave to amend, along with any and all other relief this Court deems necessary and proper.

DATED: April 14, 2008 LAW + BRANDMEYER, LLP

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ERIC ANDERSON, M.D. and FREMONT EMERGENCY SERVICES, INC. (erroneously sued and served herein as FREEMONT EMERGENCY SERVICE, INC.)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 245 S. Los Robles Ave., Suite 600, Pasadena, CA 91101.

On April 14, 2008, I served the foregoing document described as:

NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANTS ERIC ANDERSON, M.D. AND FREMONT EMERGENCY SERVICES, INC. TO PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED MAILING LIST

[X] (BY MAIL)
[ ] I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.
[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
Executed on April 14, 2008, at Pasadena, California.

[X] (BY ELECTRONIC SERVICE)
[X] I served by electronic service a true copy of the above-described document. I am "readily familiar" with this firm's practice of processing correspondence by electronic service. Under that practice documents are submitted via electronic mail to each party and received simultaneously at their destination. Once the document has been transmitted, the electronic mail inbox provides a record indicating time of completion.
Executed on April 14, 2008 at Pasadena, California.

[ ] (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on ??, at Pasadena, California.

[ ] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Emmy Zhin

SERVICE LIST

Re: Joan G. Lozoya v. Eric J. Anderson, M.D., et al.
Case No.: 07CV-2148IEG (WMC)

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